

# The Rule of Law Without Morality: An Instrument of Tyranny



**M**any of us are familiar with the famous line spoken by the Butcher in William Shakespeare's *Henry VI, Part 2*: "The first thing we do, let's kill all the lawyers." It doesn't take a Shakespearean scholar to recognize that the character who utters these words is a "bad guy" who is actually looking to foment upheaval in society. The true message of these famous words is that, without lawyers, there will be no law and order and no rule of law to inhibit egregious behavior.

But is the rule of law itself enough? I submit that it is not, because law without moral underpinnings is tyranny.

Tyrannical governments throughout history such as Hitler's Germany and Mussolini's Italy have relied on the rule of law. But those leaders and their regimes lacked morality.

And the tyranny continues today.

For example, more than 30 attorneys in the Philippines have been targeted and murdered over the past two years. Recently, a leading journalist and her attorney were jailed in the Philippines for re-publishing an allegedly defamatory article that had originally been published seven years earlier. When he was President-elect and was asked about the murders of lawyers and journalists, Philippines leader Rodrigo Duterte stated, "Just because you're a journalist, you're not exempted from assassination."

In Hungary, a new "administrative court system" controlled by the executive branch has been established to handle certain cases, including corruption, election law, and the right to privacy. Europe's highest court recently ordered the Polish government to reinstate two dozen

judges who had been ousted from office for decisions unfavorable to the government.

I cite these examples from history and from other nations because they are important for us to understand as we consider what is happening today in American society. The rule of law in the United States is endangered in a way that it has never been before in the history of the republic. I believe that we must demand that there is morality behind the rule of law, and I worry that we as a society are failing to do so.

Given the tumultuous tenor of these political times in our country, it's hard to blame people for wanting to simply tune out. A political disagreement recently led to the longest federal government shutdown in history, which caused upheaval and hardship for millions and impacted many vital services. Undocumented immigrants are separated from their children at the U.S. border, and our government acknowledges that some of these families are unlikely ever to be reunited.

And troublingly, questions swirl around the President relating to obstruction of justice and collusion with foreign governments. A close associate of the President is indicted for actions allegedly taken during the campaign, and while free on bail posted on social media a photo of the judge in his case with the crosshairs of a gun near her head.

In all of these instances and others, I search for a moral component, a belief in some bigger idea and how these actions might support it. I acknowledge that others might find that morality, but I do not. And I wonder, are we inching toward tyranny?

There are many good things happening in our world: The economy is strong. People are living longer lives. Science continually produces breakthroughs that enhance the human condition.

At the same time, our politics are profoundly polarized. Public discourse has become remarkably coarse. And the public is losing confidence in the capacity of our institutions to solve problems.

I've said this on many occasions in recent months, but it bears repeating: It is time for lawyers to step up and speak up. We must use our considerable advocacy skills to remind our communities that the world follows our lead.

We are problem solvers, we are the people others turn to in times of crisis and difficulty. We are trained to consider all sides of a given matter and to help adversaries move toward resolution. We know how to disagree without being disagreeable.

At NYSBA's Annual Meeting in New York City in January, former U.S. Attorney for the Southern District of New York Preet Bharara pointed out that "democracy operates on the honor system."

Lawyers are the guardians of that system and the precious civil liberties it grants to us all. Today it is more important than ever for us to recognize that this important role extends beyond the courtroom or the conference room.

So, it is no longer enough for us simply to talk about the rule of law. We need to demonstrate the moral values that keep the rule of law from being used to impose tyranny.

Without a deep and abiding belief in fairness and human dignity – and without an independent judiciary and the apolitical administration of justice – there will not be equality under the law for all. And without morality, the rule of law becomes an instrument of tyranny.

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